

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOHN M. ANDERSON, et al.,

Plaintiffs,

v.

Case No. 23-CV-1430

WISCONSIN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

**DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' DECLARATIONS
(DKTS. 43-45, 48.)**

Plaintiffs have recently filed four declarations. Plaintiff Burks (AKA Burkes), Plaintiff Kurkowski, and Plaintiff Salinas-Leal filed declarations on May 10, 2024. (Dkts. 43-45.) On May 14, 2024, Plaintiff Johnson filed his own declaration. (Dkt. 46.) It is not clear to Defendants what the purpose of these declarations are. There are three pending substantive motions in this case, but all of them have been fully briefed.

- Plaintiffs' motion for a preliminary injunction (Dkt. 28), filed on March 22, 2024, was fully briefed as of Defendants' response on April 8, 2024.
- Plaintiffs' motion for class certification (Dkt. 34), filed on March 29, 2024, was fully briefed as of Defendants' response on April 18, 2024.¹

¹ Plaintiff did not file replies in support of his motion for a preliminary injunction or his motion for class certification by the deadline, despite having the opportunity to do so. *See* Civil L.R. 7(c).

- Defendants' motion for partial summary judgment (Dkt. 29), filed on March 25, 2024, was fully briefed as of Defendants' reply on April 26, 2024. (Dkt. 40.)

Plaintiffs did not seek leave to file these additional declarations, nor did they filed any memorandum explaining their relevance. Nor did Plaintiffs seek extensions to any of the deadlines associated with the pending substantive motions in order to file these declarations. Nor did Plaintiffs communicate with undersigned counsel for the Defendants advising them of these declarations and their relevance. As such, Defendants assert that these declarations must be stricken. Alternatively, Defendants assert that this Court must disregard them for purposes of considering the pending motions.

Insofar as the Court considers them with respect to the exhaustion motion, Defendants note that the declarations contain allegations that the grievance procedure was unavailable to the declarants during the relevant time period. This allegation was not raised in response to Defendants' motion for partial summary judgment. (Dkt. 37.) Further, this allegation is materially contradicted by the Inmate Complaint History Reports of the Plaintiffs in this action.

- Plaintiff Anderson, who belatedly filed one of the declarations as issue, was able to file twelve (12) unrelated inmate complaints during the period of time between the initiation of modified movement on March 29, 2023 and when the complaint was filed in this action on October 26, 2023. He exhausted 6 of them. (Dkt. 32-1, at 3-4.)
- Plaintiff Kurkowski filed four (4) complaints during the relevant time period, including one which was exhausted. (Dkt. 32-4, at 1.)
- Plaintiff Salinas-Leal did not file any inmate complaints during the relevant time period, but did file an inmate complaint on November 27, 2023. (Dkt. 32-

21, at 1.)

- Plaintiff Burkes filed eleven (11) inmate complaints during the relevant time period, including 3 which were exhausted through the administrative process. (Dkt. 32-18, at 1.) Burkes even exhausted a complaint regarding his access to medical care for his eye pain which was relevant to this lawsuit. (Dkt. 32-20). As such, Defendants did not move for the dismissal of his eye claim from this lawsuit. (Dkt. 30 at 13-14.)

This evidence belies the notion that the grievance procedure was unavailable to the Plaintiffs. Defendants maintain that their motion for partial summary judgment must be granted.

CONCLUSION

For these reasons, Defendants move this Court to strike these declarations.

Dated this 17th day of May, 2024.

Respectfully submitted,

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